



Costs Decision

Site visit made on 17 June 2022

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd July 2022

Costs application in relation to Appeal Ref: APP/C1570/W/20/3250328 Land South of Brick End, Broxted, Essex CM6 2BJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Ms Esther Breaker for a full or partial award of costs against Uttlesford District Council.
 - The appeal was against the refusal of planning permission for a development described as 'The change of use of land for the stationing of caravans for residential purposes together with hardstanding and dayroom ancillary to that use and the erection of stables'.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance (PPG) states that an award of costs may only be made against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. The PPG also states that a Council is at risk of an award of costs if it: prevents or delays development which should clearly be permitted; relies on vague, generalised or inaccurate assertions about a proposal's impact; fails to substantiate each reason for refusal; or fails to review its case promptly following the lodging of the appeal.
3. The Council refused the planning application on three grounds, the second and third related to the adequacy of the living conditions of future occupants with reference to land contamination and noise. The appeal submissions included an assessment of land contamination and noise. These were reviewed promptly by the Council. After this review the Council removed its objections, being of the view that these matters could be addressed through the imposition of conditions securing details.
4. A land contamination assessment had been submitted with the planning application, but it had formatting problems which meant parts of the document could not be read. The noise assessment had been submitted alongside a previous planning application, but not under the cover of application UTT/19/1777/FUL. The applicant sought to remedy these omissions by submitting the documents, but the Council determined the application before they could.

5. In the circumstances, the Council's approach was not entirely conducive with positive planning as these documents could have been requested at an earlier stage and before the application was determined. That said, there is no requirement placed on the Council to seek missing information. Instead, the applicant and her team would have been aware that both noise and land contamination would be relevant matters in the assessment of the application necessitating the submission of accurate and legible evidence. The failure to do so was not the fault of the Council. As a result, the second and third reasons for refusal were not unreasonable. The fact the applicant submitted the 'missing' evidence with her appeal is tacit acceptance of this.
6. The Council's first reason for refusal stated that the authority was unable to determine that the proposal would be appropriate within the chosen location, or that it would meet the sustainability criteria in the National Planning Policy Framework. This finding must be considered in the context of the Officer's report, which found that the proposal would be at odds with Policies S7 and S8 of the Uttlesford Local Plan 2005. This was because the proposal, in the Council's view, would not protect the countryside and insufficient information had been submitted to demonstrate there is a need for the proposal or that there are other matters which would otherwise render it appropriate in a rural area. The author of the report attached limited weight to the conflict with Policy S7 and full weight to the conflict with Policy S8.
7. In effect, the Council was of the view there was no need for two pitches in the countryside (and Countryside Protection Zone), particularly as they would, in the Council's view, be positioned away from services and facilities. This finding was reached with reference to the Council's Gypsy and Traveller Accommodation Assessment (GTAA), which suggests there is no need for additional pitches for those meeting the definition of a Gypsy or Traveller for planning purposes, as set out in the Planning Policy for Traveller Sites (PPTS). It is therefore inaccurate to suggest the Council did not consider the PPTS at all at the application stage, although I accept its reference was limited in scope.
8. The planning application was supported by a planning statement which provided no criticism of the GTAA and made only a very limited and passing reference to the PPTS. There is no meaningful reference to the personal circumstances of any specific individual. As a result, it is entirely understandable why the Council took the view that it was unable to determine that the proposal would be appropriate – in effect that the decision should be made otherwise than in accordance with its countryside protection policies. Thus, the Council's decision was not unreasonable in the circumstances.
9. On the other hand, the appeal was submitted with an extensive body of evidence and an evolved case. Amongst other matters the applicant submitted that the Council could not demonstrate a five-year supply of pitches, that the findings of the GTAA were incorrect and unreliable and that there would be wider sustainability benefits when applying the policies in the PPTS. These were not points that had overtly been put to the Council before. It was the applicant's choice to submit her planning application with a skeletal case and then seek to considerably expand this at the appeal stage with new arguments (and the additional land contamination report and noise survey), rather than make a fresh planning application to the Council.

10. Within its appeal statement the Council reiterates its assessment that the proposal would be at odds with Policies S7 and S8. Sustainability, in terms of access to services and facilities is also addressed with reference to the National Planning Policy Framework. The assessment is sparse but adequate when read in the context of the original delegated report. It was also expanded upon at the hearing.
11. The Council's appeal statement does not refer to the PPTS and nor does it provide a rebuttal to the criticisms made of the GTAA. Moreover, the Council failed to provide an up-to-date position regarding the five-year supply of pitches, despite me asking before the hearing opened. In effect, the Council failed to grapple with the very extensive case presented by the applicant. That said, there is nothing before me to demonstrate the Council would have changed its mind had it engaged more fully with the PPTS at an earlier point. For example, the Council maintained its objection to a permanent approval of the appeal scheme even after the PPTS was discussed at the hearing in detail.
12. The Council's failure to address the PPTS in its appeal statement as an important material consideration is clearly a notable omission and I can see why the applicant considers this to be unreasonable. However, I do not consider the applicant has been put to unnecessary expense in the appeal process because of this. I have come to this view because the applicant's case at the application stage was sparsely made, and it was only once the appeal was submitted that extensive detail followed. Moreover, upon reviewing this evidence and discussing matters at the hearing, the Council maintained its position that the proposal should be determined in accordance with the development plan given the extent of the conflict with its countryside protection policies, especially Policy S8. This was a reasonable position to take given the primacy of the development plan. The hearing was necessary to allow this matter to be explored and tested. This was even more so given the level of local interest.
13. Accordingly, the Council's originally decision was reasonably made and therefore it has not prevented development that should clearly have been permitted. The Council's concerns were not vague or generalised because they were grounded in policy and reasonably articulated and substantiated in the delegated report, appeal statement and at the hearing. The Council did not refer to the PPTS in its appeal statement, but it was entitled to maintain its objection under its first reason for refusal. For the reasons I have set out in my formal decision, these were not unfounded. Whether these concerns were outweighed by material considerations, including the PPTS, is a matter of planning judgment, the discussion of which necessitated a hearing in this instance. As a result, the appellant has not been put to unnecessary expense in submitting their appeal and attending the hearing.

Conclusion

14. In conclusion, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not occurred. The application for costs is therefore refused.

Graham Chamberlain
INSPECTOR